



January 9, 2001

Mr. John L. Schomburger
Assistant District Attorney
Collin County
210 South McDonald, Suite 324
McKinney, Texas 75069

OR2001-0093

Dear Mr. Schomburger:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 142984.

The Collin County District Attorney (the “district attorney”) received a written request for “the entire file and all criminal convictions of” a named individual. You contend that the requested information is excepted from required public disclosure pursuant to, among other exceptions, section 552.108 of the Government Code.¹

Section 552.108(a)(3) of the Government Code provides that information is excepted from public disclosure if it is information that is either (A) prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or (B) information that reflects the mental impressions or legal reasoning of an attorney representing the state. Section 552.108(a)(3), in essence, protects a prosecutor’s “work product.”

The work product doctrine is applicable to litigation files in criminal as well as civil litigation. *See Curry v. Walker*, 873 S.W.2d 379, 381 (Tex. 1994) (citing *United States v. Nobles*, 422 U.S. 225, 238 (1975)). In *Curry*, the Texas Supreme Court held that a request for a district attorney’s “entire litigation file” was “too broad” and, quoting *National Union*

¹Because we resolve your request under section 552.108, we need not address the applicability of the other exceptions you raised.

Fire Insurance Company v. Valdez, 863 S.W.2d 458, 460 (Tex. 1993, orig. proceeding), held that “the decision as to what to include in [the file] necessarily reveals the attorney’s thought processes concerning the prosecution or defense of the case.” *Curry*, 873 S.W.2d at 380. Because the requestor in this instance seeks all the information in the district attorney’s litigation file, we conclude that the district attorney may withhold the information contained in the requested file pursuant to section 552.108(a)(3) of the Government Code as attorney work product, except as discussed below.²

We first note that section 552.108 does not except from required public disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Because you have raised no other applicable exception to disclosure, the district attorney must release these types of information in accordance with *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

We also note that among the documents at issue are copies of public court records. Section 552.022(a) of the Government Code provides in pertinent part:

Without limiting the amount or kind of information that is public information under this chapter, *the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:*

....

(17) information that is also contained in a public court record.

Gov’t Code § 552.022(a)(17) (emphasis added). We therefore conclude that all records contained in the district attorney’s prosecution file that consist of a record that would also be contained in a public court record must be released to the requestor.

²We note, however, that a specifically requested document is not automatically considered to constitute work product simply because it is a part of an attorney’s litigation file. *Valdez*, 863 S.W.2d at 461. Thus, an individual may request specific documents or categories of documents contained in the litigation file without necessarily implicating the work product privilege. The party opposing disclosure in such a case has the burden of explaining the applicability of the privilege. *Id.* In this instance, contrary to your assertion, the prosecution file does not contain “criminal history record information.” See Gov’t Code § 411.082. Consequently, we do not construe the request as seeking specific documents contained in the file.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

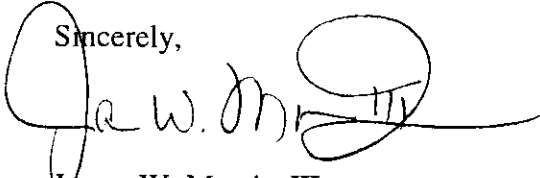
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris III". The signature is fluid and cursive, with a large initial "J" and a stylized "W".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/RWP/seg

Ref: ID# 142984

Encl. Submitted documents

cc: Mr. Daniel A. Knott
Matthews, Carlton, Stein, Shiels, Pearce, Dunn & Knott, L.L.P.
8131 LBJ Freeway, Suite 700
Dallas, Texas 75251
(w/o enclosures)